

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 1645 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE R.P.DHOLAKIA****HONOURABLE MR.JUSTICE MD SHAH**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?5 Whether it is to be circulated to the civil judge
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KALABHAI @ KALYANBHAI BHIKHABHAI RAVAL - Appellant(s)**Versus****STATE OF GUJARAT - Opponent(s)**

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Appearance :

MR NL RAMNANI for Appellant(s) : 1,

Mr.U.R.Bhatt, A.P.P. for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA**and****HONOURABLE MR.JUSTICE MD SHAH****Date : 28/03/2007****CAV JUDGMENT****(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)**

1. This appeal has been filed against the judgment and order passed by the learned Additional Sessions Judge, Gandhinagar by which the present appellant-accused has been convicted for the offences punishable under Sections 302 and 324 of the Indian Penal Code. The learned Additional Sessions Judge acquitted the original accused no.2 Sitaben of the above referred offences. The learned Additional Sessions Judge awarded life imprisonment and also imposed fine of Rs.500/- in default six months rigorous imprisonment to the appellant-accused.

1.1 Brief facts of the prosecution case are as under:

The complainant Manghiben Baldevbhai was residing with his family at Dehgam. She and her husband were doing labour work and both of them had one daughter named Sonalben aged about 14 and one son Jagdish aged about 8 years. The husband of the complainant and one Kalabhai Bhikabhai Raval uncle of the deceased Baldevbhai used to earn from the business of playing drums. It was mutually agreed by them to play the drums turn by turn. The appellant-accused Kalabhai went to Valamvas for playing drums on the occasion of marriage on 26th April, 2001 at about 1.00 p.m. Baldevbhai asked the appellant as to why he had gone to play drums though it was not his turn. He also scolded him for this. Thereupon, appellant-accused Kalabhai and his wife started abusing Baldevbhai using filthy language. Deceased Baldevbhai

asked him not to abuse him, but the appellant accused got enraged, took out the dagger from his waist and inflicted blows on right hand as well as on abdomen of deceased Baldevbhai. Thereupon, Sitaben wife of deceased Baldevbhai intervened but she was also given a knife blow by the appellant-accused. It is also alleged that original accused no.2 Sitaben wife of present appellant-accused also came with stick and gave blow on head of deceased Baldevbhai. At that time also the appellant accused gave knife blows on the body of deceased Baldevbhai. The complainant, her daughter Sonalben and her son Jagdish shouted for help and people gathered there. The appellant-accused ran away from the spot. Thereafter, deceased Baldevbhai was shifted to Civil Hospital, Dehgam where during treatment, he succumbed to his injuries. Complaint has been lodged by Manghiben wife of the deceased Baldevbhai before ASI, Dehgam. The Investigating Officer held inquest of the dead body of the deceased and also drew Panchnama of scene of offence during investigation. He also recorded statement of the witnesses. The appellant-accused was arrested on 2nd May, 2001 and arrest Panchnama was also drawn. At the instance of the accused Muddamal dagger was recovered and discovery Panchnama was also drawn. At the end of investigation, the Investigating Officer Shri Parmar filed charge-sheet before the Judicial Magistrate, First Class, Dehgam for the above referred offences who by his order dated 20th July, 2001 passed under Section 209 of the Criminal Procedure Code committed the case to

the Sessions Court.. Charge at Exh.10 was framed by the learned Additional Sessions Judge, Gandhinagar, for the above referred to offences. The accused denied the charges and claimed to be tried. To prove its case against the appellant-accused, the prosecution has examined 12 witnesses, namely, (1) Manghiben Baldevbhai PW 1 at Exh.14, (2) Sonalben Baldevbhai PW 2 at Exh.16, (3) Hasmukhbhai Thakersingbhai Thakore PW 3 at Exh.22, (4) Rasikbhai Ishwarbhai Dantani PW 4 at Exh.24, (5) Ambaji Bachuji Thakore PW 5 at Exh.26, (6) Jitubhai Haribhai PW 6 at Exh.27, (7) Dr. Jagdishbhai Mahashanker Bhatt PW 7 at Exh.30, (8) Vasantbhai Bhikhabhai PW 8 Exh.34, (9) Vittalbhai Somabhai PW 9 at Exh.35, (10) Jyotindra Amrutlal Upadhyay PW 10 at Exh.36, (11) Bharatkumar Pranjivan Dakshini PW 11 at Exh.37 and (12) Rakeshkumar Shreedayal Sharma PW 12 at Exh.38. The prosecution has also produced documentary evidence, such as, Complaint Exh.15, Inquest Panchnama Exh.17, Panchnama of the scene of offence Exh.18, Panchnama of recovery of clothes from the dead body of the deceased Exh.23, Panchnama regarding physical condition of the accused no.2 Sitaben Exh.19,, Panchnama regarding the physical condition of the accused no.1 Kalabhai Bhikhabhai Exh.25, Panchnama of recovery of the weapons at Exh.28, P.M. Note Exh.31, FSL report Exh.41, Pathological of FSL Exh.42, Report of Serologist Exh.43, Medical certificate of ManghibenBaldevbhai, Exh.32, Medical certificate of Sitaben Kalaji Raval Exh.33.

2. After recording of evidence, the learned Additional Sessions Judge recorded the further statement of the accused under Section 313 of the Criminal Procedure Code in which both the accused submitted that they were falsely involved in the case and that they are innocent.

3. After hearing the learned Advocates of both the sides, the learned Additional Sessions Judge, acquitted the accused no.2 Sitaben of the charges levelled against her and convicted the present appellant-accused as stated in para-1 of this judgment giving rise to the present appeal.

4. Heard learned Advocate Mr. N.L.Ramani for the appellant-accused and learned A.P.P Mr. R.C.Kodekar for the State.

5. Learned Advocate Mr. Ramani vehemently argued that the learned Additional Sessions Judge has not appreciated the evidence on record properly and by that committed error in convicting the appellant. It is also argued by him that the learned Additional Sessions Judge has not considered the major contradictions in the deposition of the witnesses. He also alternatively argued that if the Court comes to the conclusion that the appellant-accused is guilty of commission of offence, then also, taking into consideration the medical evidence and the manner in which the incident took place, the case falls under Section 304, Part II and not under Section 302,

IPC. He next argued that even assuming that accused has committed offence, it transpires from the evidence that due to sudden provocation, accused caused injury to the deceased Baldevbhai, and hence, the case false under Section 304, Part II, IPC. On the other hand, the learned A.P.P. submitted that the judgment and order passed by the learned Additional Sessions Judge is legal and proper which does not require interference, and therefore, the appeal deserves to be dismissed.

6. This Court has gone through the entire record of Sessions Case no.62 of 2001. It is pertinent to note that complainant Manghiben Baldevbhai PW 1 and Sonalben Baldevbhai PW 2 both were eye witnesses to the incident and Manghiben PW 1 also received injuries during the incident. We have gone through the evidence of both these witnesses and we have found that their evidence is quite natural, trustworthy and inspires confidence. There are no major contradictions in their evidence regarding the manner in which the accident took place. PW 1 Manghiben categorically stated that the appellant-accused inflicted dagger blow on the person of Baldevbhai. Her version is totally corroborated by PW 2 Sonalben who is also an eye witness to the incident. The evidence of these two eye witnesses PW 1 and PW 2 also finds corroboration from the evidence of PW 7 Dr. Jagdishbhai Mahashanker Bhatt who treated the complainant Maghiben and who had performed the autopsy on the dead body of the deceased

Baldevbhai. From the evidence of this witness, it is proved by the prosecution that Manghiben also received injuries on the chest which could be caused by sharp cutting instrument. Exh.32 medical certificate of Manghiben is also proved through the evidence of this witness. Postmortem Note Exh.31 of deceased Baldevbhai is also proved through the oral evidence of this Doctor. Both the eye witnesses are illiterate, belonging to backward community and residing in a small village, and so, some minor discrepancies in their evidence are bound to occur. When there are no major contradictions and discrepancies in the evidence of the eye witnesses. We have minutely evaluated the evidence of both these witnesses Manghiben PW 1 and Sonalben PW 2 and found that their evidence is natural, trustworthy and inspires confidence. Nothing has been culled out from the cross-examination of these witnesses which create doubt about the credibility of their evidence. As discussed above, their oral evidence is totally supported by medical evidence and it is required to be noted that PW 1 Manghiben has also received injuries during the said incident, and so, the lower Court has rightly held the present appellant-accused guilty.

7. Now, if we peruse the oral evidence as well as the medical evidence, it is found that the present appellant-accused has caused five injuries on the person of deceased Baldevbhai As per the medical evidence deceased Baldevbhai received serious injuries on

the abdomen. Dr. Jagdishbhai Mahashanker Bhatt who conducted the postmortem of the dead body of the deceased has found the following injuries - (1) Stitched wound over right side abdomen below hypocardial region, umblicus (stitched open) stab wound 4 cms. X 2 cms. X 8 cms. Deep, (2) Incised wound over right side arm 2 cms. X 1 cms. X muscle deep, (3) Incised wound over right side just above front of axilla 4 cms. X 1 cm. x muscle deep., (4) Incised wound (superficial) rt. Side chest lateral aspect 2.5 cms. X 0.5 cms., (5) Incised wound over rt. Side lateral aspect arm 2 cms. X 2 cms. X muscle deep. All these injuries are stated to be ante mortem. According to the Doctor deceased Baldevbhai died as a result of shock due to rupture of small intestine and kidney. The Doctor has opined that injury no.1 is possible by Muddamal article no.8 knife. He also opined that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause death.

8. Taking into consideration the deadly weapon dagger (knife) used by the appellant accused in the commission of the crime and the blows inflicted on the vital part of the body like abdomen causing rupture of small intestine and kidney, it could not be said that there is no intention on the part of the appellant-accused to commit murder, and therefore, the appellant accused cannot get the benefit under Section 304, Part II.

9. We are, therefore, clearly of the opinion that the prosecution

has established beyond reasonable doubt through the evidence of prosecution witnesses as narrated above, the involvement of the appellant-accused in commission of the offence. In our opinion the evidence of the above prosecution witnesses is natural, credible and reliable. Barring few minor discrepancies or omissions in the evidence of prosecution witnesses, they have remained consistent in their evidence. As cited above, the so called contradictions and or omissions in their evidence as tried to be suggested by the learned Advocate for the appellants are too trifling and they have no reason to falsely involve the accused, and therefore such contradictions and omissions are required to be ignored. The evidence of the witnesses, the medical evidence and the discovery Panchnama and other evidence on record sufficiently and convincingly establishes the guilt of the appellant-accused. The appellant-accused is , therefore, liable to be convicted under Section 302, IPC. Thus, the finding recorded by the learned Judge that the appellant had caused injuries to the deceased Baldevbhai by inflicting dagger (knife) blows resulting into his untimely death being eminently just is hereby upheld.

10. On overall appreciation of the evidence, we are satisfied that there is no infirmity in the reasoning assigned by the learned Judge in recording conviction of the appellant-accused under Section 302 of the Indian Penal Code which does not call for our interference in the present appeal.

11. The net result of the above discussion is that the prosecution has proved beyond reasonable doubt that the appellant accused had committed murder of the deceased Baldevbhai and there is no merit in the appeal. The appeal is therefore liable to be dismissed.

12. For the foregoing reasons, the appeal fails and is dismissed. Muddammal articles to be disposed of in terms of the directions given by the trial Court in the impugned judgment.

(R.P.Dolakia,J.)

(M.D.Shah,J.)

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